No. 11,554

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

J. R. MASON,

Appellant,

vs.

MERCED IRRIGATION DISTRICT,

Appellee.

APPELLANT'S REPLY BRIEF.

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Appellant Pro Se.

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The brief for appellee raises a fundamental principle of Constitutional law, and other matters that make this reply necessary.

Appellant has believed, and as he sees the usurpation of power and infringement of sovereignty grow in so many parts of the world, is more convinced than ever that our inherent doctrine of immunity, as steadfastly interpreted, construed and applied is basic to the survival of liberty in this Constitutional Republic. It is this unique principle embodied in our Constitutional structure, differing radically from any other government, that appellant has struggled for many years to protect and defend against Huns and vandals, whether from within or without. Lord Macaulay gave us a salutary warning in his famous letter to

Henry S. Randall, Esq., written May 23, 1857, wherein he said: "As I said before, when a society has entered on this downward progress, either civilization or liberty must perish. Either some Caesar or Napoleon will seize the reins of government with a strong hand, or your Republic will be as fearfully plundered and laid waste by barbarians in the twentieth century as the Roman Empire was in the fifth, with this difference, that the Huns and vandals who ravaged the Roman Empire came from without, and that your Huns and vandals will have been engendered within your own country by your own institutions."

The pecuniary interest of appellant in the trifling number of bonds here involved, is inconsequential. But, the principle of intervention by the Federal authorities in the fiscal affairs of a sovereign State, when rights secured by the Federal Constitution have not been infringed, and especially intervention in respect of the State's tax and land tenure laws governing the inalienable right of every person lawfully within that State to earn, to hold land, and the equal right to appropriate its rents, issues and profits, if allowed to Congress under any circumstances is supreme and paramount. Even the leading Centralist Hamilton recognized in Essays XXXII and XXXIII *The Federalist,* that the inherent power of the States to tax land would remain "independent and uncontrollable" by virtue of any power delegated to Congress, in "the most absolute and unqualified sense".

Appellant does not here question any previous order by this Court, nor by the Supreme Court in respect of

bond obligations covered by such orders, and the effort of appellee to prejudice this Court against appellant on the ground that he has been the aggressor is unfair. The instant action was commenced by appellee, by filing a petition July 23, 1946 in the Court below. Appellee was unwilling to abide by the decision of the Supreme Court in the *Ashton* case (298 U. S. 513), and tried hard to be allowed to bludgeon the holders of the then "still outstanding bonds", but its petition was denied. (302 U. S. 709.)

Appellee can not successfully deny that its fixed and continuing duties, as a statutory trust, and land taxing body are in all respects governed and controlled by the Constitution and laws of California, exclusively.

Nothing decided in the *Bekins* case (304 U. S. 27) supports the argument by appellee (p. 13) that Congress, in enacting 11 U.S.C.A. 401-403, allowed its Courts to create any obligation "by the interlocutory decree", when, as here, such a decree would have the force and effect of allowing such governmental arms of the State as appellee (to which the State has delegated its sovereign power to tax and control privately held land), the authority to administer its delegated powers and duties according to Statutes of the Congress, and decrees of its Courts, and without regard to the laws of its creator, the State of California, or the vested property rights of appellant with whom it executed contracts.

The jurisdiction authorized in proceedings based upon 11 U.S.C.A. 401-403 as amended June 30, 1946 is far narrower than that authorized by other Chap-

ters of the Bankruptcy Act. The only jurisdiction allowed over the bankrupt must be acceptable to the bankrupt. The Court may issue no order or decree objected to by the bankrupt. *Spellings v. Dewey,* 122 F. (2d) 652; *Green v. City of Stuart,* 135 F. (2d) 33; *Ware v. Crummer & Co.,* 128 F. (2d) 114. Any interference with the fiscal affairs of appellee is not authorized, and is expressly inhibited by subdivisions (c) and (i) of Section 403, 11 U.S.C.A.

Any order or decree based on this federal statute having the effect of "interfering" with a ceiling on local property tax rates, would be a nullity, if it increased the tax rate above the ceiling provided in State law.

Here, the decree of December 31, 1946, if it stand, would have the force and effect of allowing appellee to levy taxes on real property at rates below those required in the applicable State laws, resulting in a gift and "unjust enrichment" to land holders of public funds strictly prohibited by Article IV, section 31 of the California Constitution. (R. 139.)

It seems a complete answer to the argument that the interlocutory decree "created" an obligation, to point out that appellee has not supported that argument by showing any law or citing any case. The cited *Leco v. Crummer,* 128 F. (2d) 110, case gives him no support.

Nowhere in the precisely set out provisions allowing jurisdiction under Chapter IX is any provision made for creating an obligation on debtor or creditor. Any

such provision would conflict with the "independence" of the bankrupt, which "independence" in Chapter IX cases the Court must respect at all times. *Spellings v. Dewey,* supra.

The petition filed July 23, 1946 by appellee, and which is the base of this action, presented only one subject to the District Court, as follows:

> "That the bonds and coupons listed in Exhibit 'C' are barred by the statute of limitations and that pursuant to the provisions of the final decree above quoted, petitioner so reports to this court * * * Wherefore, petitioner prays that the unexpended funds in the hands of the Registrar * * * be paid by said Registrar to petitioner * * *". (R. 34.)

The brief filed by appellee in this Court adopts very different arguments, from the stand taken below, when appellee said:

> "It is our position that the court is now without jurisdiction to allow Mr. Mason to take the money if he now desires to do so. If the statute of limitations has run as we contend, the court would seem to have no jurisdiction except to order the money returned to the Irrigation District. General equity would not seem sufficient to override a substantive rule of law." (R. 55.)

The final decree (R. 26) expressly recognizes the bonds owned by appellant as "still outstanding obligations", in paragraph 2. (R. 27.) Exhibit "C" (R. 38) filed by appellee with the instant petition, listed the "still outstanding" obligations, as being original bonds.

Appellant objected that the question raised by this petition "presents and gives rise to a distinct and separate cause of action ruled by State law, and which should have been addressed to a court of California". Appellant then prayed that the Bankruptcy Court "leave to the courts of California the matter of fixing the rights of the parties involved * * *" (R. 43/48.)

Exhibit "C" (R. 38) shows that only three bonds owned by appellant are past due, the rest not being lawfully due or payable until 1952 to 1961. None of the bonds are subject to call or redemption before their fixed maturity dates. No statute of limitations "applicable to the still outstanding obligations" could possibly commence to run before bonds are due, and payable according to the State laws governing State bonds.

The California Legislature extended the statute of limitations to ten years on State and local bonds, at its last session. Stat. 1947, Ch. 626.

Appellee does not deny that appellant duly presented his bonds and coupons which have matured, but questions that the substantive rule of law settled in the *Moody* case (12 C. (2d) 389) makes inapplicable some statute of limitations to the "still outstanding" bonds owned by appellant.

After considering the objections filed by appellant (R. 43) and the oral arguments (R. 105/157) the District Court finding no statute applicable to the "still outstanding" bonds, decided the order sought must be denied. (R. 57.)

No statute of limitations "applicable to the still outstanding" bonds is shown in the record or the brief of appellee filed in this Court.

Adhering to the stand taken in his letter of November 12 (R. 55) appellee argued on November 15:

> "* * * regardless of whether this court in this type of proceeding may generally have equitable powers, it is our definite position that in this particular proceeding it does not have those powers * * *". (R. 127/128.)

Manifestly it was never meant in the final decree that the "still outstanding" bonds and coupons were obligations "created by the interlocutory decree", as now argued (p. 13) by appellee. The refunding bonds of the district were not, by any possible interpretation the "*still* outstanding obligations", and were in no respect "created by the interlocutory decree", but by the laws of California, which form the only base of all obligations, whether outstanding or "still outstanding", of every Irrigation District. Appellee's strained attempt to argue that any outstanding obligation of Merced Irrigation District, is an obligation created by Federal law (i.e. the Bankruptcy Act) (p. 12) is as shocking as if he attempted to argue that Federal obligations are created by State law, and State Courts.

It is respectfully submitted that there is a recognition of the existence of the "still outstanding" original bonds, in paragraph 3 of the final decree, where it is said "That except as provided in paragraph 2 * * * all the old bonds * * * affected by the plan * * *

are hereby cancelled and annulled." (R. 27/28.) Appellant has never submitted his bonds to the jurisdiction of any Court of Congress, either with his proof of claim, or otherwise.

> "The Court. Mr. Mason did not allow it * * *" (R. 133.)

It appears from appellee's brief that he now completely repudiates the laws of California which govern and control appellee's duties under applicable law (Stat. 1897, p. 254 as amended) and claims to be controlled by a decree of the Federal judiciary, wholly unauthorized by Federal or by applicable State law, saying "Here the situation is entirely different". (p. 13.)

The charge "Appellant actually defies the Court" (p. 17) is without merit. (R. 115/124.) At no point did the Court order appellant to turn his bonds into the Court, and although appellant offered to surrender his bonds under protest, the Court would not allow it. (R. 119.)

> "* * * a party may stand upon the terms of a valid contract in a court of equity as he may in a court of law."
>
> *In re National Mills,* 133 F. (2d) 604;
>
> *Mfrs. Trust Co. v. McKey,* 294 U. S. 442, 55 S. Ct. 444, 448.

The bonds impose duties on Merced County, separate and distinct from any duty of the District. That obligation was not cancelled by the final decree, because the County was never a party in the proceeding.

Kelby v. Mfrs. Tr. Co. (C.C.A. 2), 162 F. (2d) 350; *Nevada Nat. Bank v. Sup.,* 5 Cal. App. 638; Stat. 1943, Ch. 368, sec. 26525/26553. Even if the bonds were outlawed, that would not make them worthless, under the rule applied in *Ward v. Chandler Sherman Corp.,* 76 A. C. A. 453.

The judgment here appealed from (R. 76/79) goes beyond the complaint (R. 30/40) and is an error of State law, which law appellee contended is decisive of the only point involved. (R. 55/56.) The "still outstanding" bond obligations owned by appellant are not lawfully due or payable until 1952, and then serially to 1961, except for 3 bonds lawfully payable in 1940, 1941. No statute of limitations could possibly be "applicable" to obligations not legally due. The statute applicable to past due bonds was extended to ten years by the Legislature. (Ch. 626, Stats. 1947.)

Congress, in enacting 11 U. S. C. A. 401-403 never intended to allow any taxing arm of a sovereign State to govern their fiscal affairs without due regard for State law and decisions. *U. S. v. Bekins,* 304 U. S. 27. It was pointed out in *Mission Sch. Dist. v. Texas* (C.C.A. 5), 116 F. (2d) 175, that Chapter IX contains

> "* * * an express requirement that nothing shall be agreed on which State law does not enable it (debtor) to do."

The great strictness with which the Court disallows any action by irrigation district not expressly authorized by State laws is shown in *Meyerfeld v. S. S. J. I. D.,* 3 C. (2d) 409. If the funds *in custodia legis* were

deposited by appellee, or belong to appellee, such deposit violated Stats. 1939, p. 1040 governing the deposit of District funds, and Stats. 1943, Ch. 368, secs. 24350/24393.

The provision for surrender of Bonds, in Stats. 1943, Ch. 368, sec. 24735, reads as follows:

> "24735. Any owner of any bonds * * * of a district may surrender them to the district by giving the bonds * * * to the secretary for cancellation.
>
> 24736. The board shall then order the bonds * * * cancelled.
>
> 24737. Upon the making of the order, the bonds * * * shall cease to be an obligation of the district as of the time of their presentation to the secretary."

The provision for paying the bonds, reads:

> "25219. Unless otherwise provided in the proceedings for the issuance of the bonds, they and the interest on them shall be paid from money derived from an annual assessment upon land or charges which in the discretion of the board are fixed and collected in lieu thereof and all land shall be and remain liable to be assessed for these payments."

There was absolutely nothing "otherwise provided" in the proceedings for the issuance of the bonds owned by appellant, no provision in the applicable statutes for a receiver, or any interference by any Court.

If there is any statute of limitations applicable to either party in this case, it is submitted that Section 336 of the Code of Civil Procedure applies to appellee,

because he filed this action July 23, 1946, which is more than 5 years after July 15, 1941, the date of the final decree. (R. 26.)

Any tender of only a portion of the money lawfully payable fails to meet the requirement in the *Moody* case, and it is vigorously denied that appellee was justified in saying such requirements had ever been met. (p. 13.)

In any event, there is no authority whatever in 11 U. S. C. A. 401-403 allowing a Court to create any obligation, old or new, but such authority is expressly denied.

Such authority exists in the sovereign State of California, its Legislature and qualified electors exclusively, and Congress has no authority whatever to create any obligation upon a State, or its arms of government, or their creditors.

The bonds of such districts, however, do constitute contracts, secured against impairment by the Federal and State Constitutions. *Shouse v. Quinley,* 3 C. (2d) 357, *Roberts v. Richland I. D.,* 289 U. S. 71.

The argument offered by appellee that "* * * the obligation created by the composition proceedings * * * " (p. 13) is wholly unsupported, and must fail, for the reasons herein shown. No authority to create any such obligation is granted to any Court, by any statute of the Congress.

Appellee's duties to assess all taxable land within its boundaries are fixed and continuing until all of its obligations are fully paid.

"Courts of equity do not review the proceedings of officers entrusted with the assessment of property."

Las Animas v. Preciado, 167 Cal. 580;
Gardner v. N. J. (1947), 15 U. S. L. W. 4171;
Ark. Corp. v. Thompson, 313 U. S. 132, 145.

That no private holder of taxable land in a California Irrigation District is protected like persons in a contract relationship with the State or its taxing bodies, was affirmed in *Fallbrook P. U. D. v. Cowan,* 131 Fed. (2d) 513, by this Court. Despite strenuous objections in the petition to the Supreme Court, the writ was not allowed.

The priorities created by similar law are well explained in *In re Horse Heaven I. D.,* 118 P. (2d) 972, 11 Wash. (2d) 218.

Under the broadest conception of the power of a Bankruptcy Court to protect or enforce its own decrees, the District Court was without jurisdiction of the question presented in the Petition (R. 30) which forms the base of this case.

"No one has supposed that the power extends beyond enjoining state court proceedings which challenge the validity of rights decreed by the federal court."

In re Ambassador Hotel Corp. (C.C.A. 9), 124 F. (2d) 435.

LACHES.

The funds *in custodia legis* are not the "still outstanding obligations" meant in the final decree.

The District Court was not asked in the petition of July 23, 1946 to consider whether laches had occurred, but only to find "That the bonds and coupons listed in Exhibit 'C' are barred by the statute of limitations." (R. 34.)

Appellee has not proven any right, title or interest in or to the funds *in custodia legis,* which funds may only be disbursed as provided in the final decree, and Sections 851 and 852 of Title 28, U. S. C. A.; Bankruptcy Act §66, sub. b, 11 U. S. C. A. §106, sub. b; *In re Bishop* (U.S.D.C. N.J.), 72 F. Supp. 199.

If the District Court had no jurisdiction to allow appellant to draw the funds *in custodia legis,* as contended by appellee (R. 55), the Court was equally without jurisdiction to give appellee those funds while valid claims against them exist.

The District Judge took the view that the question presented by the July 1946 petition, the base of this action, is governed by federal, and not by State law.

> "The Court. I do not think it involves a question of State law. It involves a question of law under the Bankruptcy Act." (R. 118.)
>
> "The Court. Do you have the Act there, Mr. Downey? Would you read that portion of the Act again that relates directly or indirectly to the question of limitations.
>
> Mr. Downey. I think there is no mention of limitations in the Act. I can find nothing there

that does say there shall be a limitation. We have to go outside of the Act and into State Law to find the limitation in that regard." (R. 128/129.)

"The Court. That is true. There are many cases, of course, involving the doctrine of laches in which the courts have used as a yardstick the local statute of limitations on similar questions, but that would be the extent * * * The court of equity is to be guided by its own conscience * * * There is no statute." (R. 141.)

"The Court. "* * * The District certainly has no equities here." (R. 138.)

The force and effect of the decree here appealed from, if it stand, would be to give the funds *in custodia legis* to the District which "certainly has no equities here", and discharge the District from the taxing duties imposed by the Constitution and statutes of California, in respect of the "still outstanding" valid, binding and unpaid original bonds owned by appellant.

Appellee argues "it has been required to maintain its money on deposit with the court". (p. 16.) Appellee is a statutory trust with no money or property that ever did belong to "it". *El Camino v. El Camino,* 12 C. (2d) 378. It has been held that the bonds are contracts between the land holders (taxpayers) and the bond owners. *Hershey v. Cole,* 130 C. A. 683. The District is merely a trustee, ruled completely by State law. The laws in effect when the bonds owned by appellant were issued prescribed the deposit of money by appellee, and did not authorize appellee to deposit

any money with any Court. Nor did the amended Stats. 1939, p. 1040 allow it.

CONCLUSION.

Appellee is one of the most important and flourishing communities in all California, containing as part of it, for purposes of taxation, all urban land in the cities and towns of Merced, Atwater, Livingston, etc. It has gotten in, by one means or another, during the past 16 years, all of the original bonds, except the few owned by appellant, and one other bond whose owner is unknown. (p. 9.)

The vast public improvement works, water rights, dams, power plants, canals, etc., acquired by appellee with the proceeds of the original bonds could not be duplicated anywhere in California at many times their cost.

There is an easy way for appellee to get the funds *in custodia legis,* and that is to recognize the $3000 past due bonds owned by appellant by paying them, with defaulted interest, move this Court to set aside any restraint against appellant, and there will be no one in position to object. All the other original bonds are cancelled, and they certainly are no longer "still outstanding obligations".

The following observations by the learned Judges in another State are submitted as being in point with the "open violation of law" for which the brief filed by appellee seeks allowance:

> "Is it not time to find some remedy for this situation, other than one involving an appeal to the courts to enforce a system for tax assessments which is plainly in violation of the law as written? It would be refreshing, indeed, if some tax payer, or group of tax payers, would sponsor an effort to see that our tax laws are obeyed, rather than to take advantage of their open violation. It is not for this Court to point out ways by which regard for law may be required by public officials, but they exist."
>
> *In re Charleston Fed. Sav. & Loan Assn.*, 30 S. E. (2d) 513 (W. Va.).

The District Court decree, if it stand, could only mean that the Congress, in enacting 11 U.S.C.A. 401-403 has, in effect, sought to delegate to its Courts the task of rewriting the land laws of a sovereign State, and to disregard State law, as construed by the highest State Court.

The power of a sovereign State to tax land within its domain, whether exercised by the State directly, or through a local unit of government is still immune from federal interference. (*State of N.Y. v. U.S.*, 326 U.S. .....; *Arkansas Corp. v. Thompson*, 313 U.S. 132.) This principle was reaffirmed, and in no respect modified in the *Bekins* case. That sovereign State power was exercised by California upon the issuance of the bonds owned by appellant. (*Fallbrook I. D. v. Bradley*, 164 U.S. 112.)

> "Any practice which removes the land from its position as ultimate security for the bonds, or which places its proceeds (rents, issues and

profits) beyond the reach of the bondholders, destroys that plan and is contrary to the spirit of the Act * * * The land is the ultimate and only source of payment of the bonds. It can never be permanently released from the obligation of the bonds until they are paid."

Provident v. Zumwalt, 12 C. (2d) 365.

It is therefore respectfully prayed that the decree below be set aside, that the funds *in custodia legis* be distributed only according to the provisions in the final decree, and laws applicable, and that the State Court be allowed to adjudge whether the "statute of limitations applicable to the still outstanding obligations, if any, has run".

Dated, San Francisco,
October 10, 1947.

Respectfully submitted,
J. R. Mason,
Appellant Pro Se.